

ORDER SHEET

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No. S – 240 of 2026

**[Mst. Tagal (deceased) through L.Rs & another v. Late Allah Bux Abbasi
(deceased) through L.Rs & others]**

For Petitioners : Mr. Muhammad Yaseen Khaskheli,
Advocate

For Respondents No.1(a) to : Mr. Shoaib Niaz Khaskheli, Advocate
(c) and (e)

For Respondent No.11 : Mr. Abdul Sattar Mahesar, Advocate

For Respondents No.2 to 6 : Mr. Ghulam Abbas Kubar, Assistant
Advocate General Sindh

Date of hearing : 26.10.2026

Date of decision : 26.10.2026

ORDER

Adnan Iqbal Chaudhry J.- By order dated 13.11.2025, the learned Senior Civil Judge-III, Khairpur Mir's, had allowed the Petitioners' application under section 12(2) CPC and set aside the judgment and decree that had been passed in F.C. Suit No. 55/2024 in favor of Respondents 1(a) to 1(e). However, upon Civil Revision No. 71/2025 moved by said Respondents, the learned Additional District Judge-II, Khairpur Mir's, remanded the matter to the Senior Civil Judge by order dated 17.06.2026 to decide the Petitioner's application under section 12(2) CPC afresh after recording evidence on certain issues, *inter alia* "Whether the applicants under section 12(2) C.P.C. have any right, title or interest in the suit property?". It is this order that is challenged by this petition.

The judgment and decree, which was with regards to immovable property, was *exparte* against the Petitioners/defendants. Admittedly, the Petitioners remained unserved by normal modes before service was affected by publication. The trial court allowed the application under section 12(2) CPC after observing that the address of the Petitioners, who were known to the Respondents 1(a) to 1(e), was not only incomplete, but was also incorrectly mentioned in the plaint.

In such circumstances, I agree with learned counsel for the Petitioners that the question whether summons of the suit was suppressed, was a question that could be decided on existing record and did not require the recording of evidence. The issue settled by the impugned order also goes to the merits of the suit, not to the application under section 12(2) CPC.

In view of the foregoing, the impugned order dated 17.06.2025 passed in Civil Revision No.71/2025 is set-aside. The matter is remanded to the Additional District Judge-II, Khairpur Mir's to decide the revision application afresh on the basis of the existing record. Till such time, the writ of possession issued against the Petitioners shall remain suspended.

JUDGE

Naveed Ali